



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Mr. Lloyd Garza
City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-2034

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101516.

The City of San Antonio (the "city") received a request "to review all documents submitted to [the city] by department heads describing their seven percent program reduction proposals." You claim that requested information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Instead of seeking an attorney general's decision from this office as to whether the requested information is subject to required public disclosure, you initially relied on Open Records Decision Nos. 460 (1987) and 556 (1990) as previous determinations that the information is excepted from disclosure under sections 552.106 and 552.111, and declined to release the information to the requestor. You claim that "the information requested was clearly excepted

from required public disclosure based on prior decisions issued by [this] office." We disagree. An attorney general's opinion must be sought whenever the applicability of a particular exception to particular information has not already been determined. Open Records Decision No. 435 (1986). Where only the *standard* to be applied has been addressed, the *applicability* of the standard to particular information must be determined by the attorney general. *Id.*; cf. *Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (Open Records Act does not require previous determination on specific piece of information previously determined to be public; *attorney general* has discretion to determine when previous determination has been made regarding category of information to which request belongs); see *Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex. App.--Austin 1995, writ denied) (holding that because information was *per se* confidential by statute, governmental body was not required to seek ruling from attorney general). This office has consistently held that previous determinations apply only to fungible information; for example, forms or other similar interchangeable types of information. Information purportedly within the scope of sections 552.106 and 552.111 is not fungible, and, therefore, must be reviewed by this office on a case-by-case basis. Thus, the city was required to seek an opinion as to whether the requested information is excepted from required public disclosure.

You now seek an attorney general's decision pursuant to section 552.301. However, the city received the request for information on July 25, 1996, and did not request an opinion from this office until August 9, 1996, more than ten days after the city received the request. Therefore, unless the information is confidential by law or other compelling reasons exist as to why the information should not be made public, you must release the information to the requestor. Open Records Decision No. 195 (1978); Gov't Code § 552.352 (distribution of confidential information is criminal offense). We note that sections 552.106 and 552.111 are discretionary exceptions, and, therefore, a demonstration of the applicability of either section 552.106 or section 552.111 does not constitute a compelling reason to overcome a presumption of openness. See Open Records Decision Nos. 470 (1987), 460 (1987). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101516

Enclosures: Submitted documents

cc: Mr. Ken Dilanian
San Antonio Express-News
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(w/o enclosures)